

(2022) 12 GUJ CK 0050
In the Gujarat High Court
Case No : R/Criminal Appeal No. 1959 Of 2022

Nirmalkumar Dineshkumar Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-12-2022

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3, 7, 14(A)

Indian Penal Code, 1860 — Section 114, 294(B), 323, 498A, 506(1)

Citation : (2022) 12 GUJ CK 0050

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Aamir S Pathan, Sanjay Prajapati, C.M.Shah

Final Decision : Disposed Of

Judgement

Hemant M. Prachchhak, J

(1) This is an appeal under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocity Act" for short) at the instance of the appellant – original accused for the anticipatory bail in connection with the FIR being C.R.No. 11191013220722 of 2022 registered with Krishna Nagar Police Station, Ahmedabad for the offences under Sections 498A, 323, 294B, 506(1) and 114 of the Indian Penal Code and Sections 3 and 7 of the Atrocity Act.

(2) Heard Mr.Pathan, learned counsel appearing for the appellants, Ms.C.M.Shah, learned Additional Public Prosecutor for the respondent – State and Mr. Sanjay Prajapati, learned counsel appearing for the respondent – original complainant

(3) Mr. Pathan, learned advocate for the appellant has submitted the same facts which are narrated in the memo of appeal and has prayed to release the appellants on bail.

(4) Per contra, Ms.Shah, learned Additional Public Prosecutor for respondent No.1

- State as well as Mr. Prjapati, learned counsel appearing for respondent No.2 – original complainant have jointly requested this Court that the present appeal may be dismissed.

(5) I have perused the papers and also heard the learned advocates appearing for the respective parties.

(6) Learned advocate for the respondent No.2-Org. Complainant has objected the present appeal on the ground that the appellant-husband has demanded the dowry and therefore, it is clear allegation made against the present appellant that the petitioner has demanded Rs.55/- lakhs. Considering the condition of the appellant as well as complainant, it seems that the allegation is absolutely baseless even I have also heard learned Additional Public Prosecutor as well as perused the Police papers, this Court is inclined to grant bail to the present applicant. As per the earlier order dated 04.10.2022 passed by this Court, the statement of the applicant has been recorded.

(7) In the result, the present appeal is allowed. The impugned order dated 21.09.2022 passed by the learned Additional Sessions Judge, & Special Atrocity Court, Ahmedabad in Criminal Misc. Application No.6582 of 2022 is hereby quashed and set aside. It is ordered that in the event of appellant herein being arrested pursuant to FIR being C.R.No. 11191013220722 of 2022 registered with Krishna Nagar Police Station, Ahmedabad, the appellant shall be released on bail on furnishing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) each with one surety of like amount on the following conditions that the appellant shall:-

(a) cooperate with the investigation and make available for interrogation whenever required;

(b) remain present at concerned Police Station on 20.12.2022 between 11.00 a.m. and 2.00 p.m. and in case of lady accused shall not remain personally present before the concerned police station, but as and when the Investigating Officer wants their presence, they may inform well in advance;

(c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade from disclosing such facts to the court or to any police officer;

(d) not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

(e) at the time of execution of bond, furnish their address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;

(f) not leave India without the permission of the Court and if having passports shall deposit the same before the Trial Court within a week; and

(g) it would be open to the Investigating Officer to file an application for remand

if he considers it proper and just and the learned Magistrate would decide it on merits;

(8) Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the appellant. The appellants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the appellants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

(9) At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellants on bail. The appeal stands disposed of, accordingly. Direct service is permitted.